

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

[R06-267]

PREAMBLE

1. Sections Affected

R4-15-101
R4-15-102
R4-15-201
R4-15-205
Table 1
Article 3
R4-15-301
R4-15-302
R4-15-303
Article 4
R4-15-401

Rulemaking Action

Amend
Amend
Amend
New Section
Amend
New Article
New Section
New Section
New Section
New Article
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 32-4203(A)(7)

Implementing statute: A.R.S. §§ 32-4203(A)(1), 32-4203(A)(3), 32-4203(A)(5), 32-4205, 32-4222(B)(1), 32-4225, 32-4226, 32-4227, 41-1073

3. The effective date of the rules:

September 9, 2006

4. A list of all previous notices appearing in the *Register* addressing the final rule:

Notice of Rulemaking Docket Opening: 12 A.A.R. 1033, March 31, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 1056, April 7, 2006

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Dr. Craig Runbeck, Executive Director

Address: 1400 W. Washington, Suite 230
Phoenix, AZ 85007

Telephone: (602) 542-8604

Fax: (602) 542-3093

E-mail: craig.runbeck@npbomex.az.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

The Board is changing the entry level educational requirement for a massage therapist as stated in the current rules in R4-15-201(A)(1)(g) and R4-15-201(B)(3) from 500 hours of classroom hours of supervised training at a Board-approved school to 700 hours as stated in the proposed rules in R4-15-201(A)(1), R4-15-201(A)(2), R4-15-201(B)(1)(g). When the statutes for licensing massage therapists were passed, the legislature supported a minimum of 500 hours of education. However, A.R.S. § 32-4222 includes a provision that states on or after July 1, 2005, the Board may increase the minimum number of classroom hours of supervised instruction at a Board recognized school that an applicant for licensure must successfully have completed to qualify for licensure. The Board received written

Notices of Final Rulemaking

requests from the American Massage Therapy Association and the Arizona Council of Massage Therapy Educators asking that the hours be increased to 700 classroom hours to enable massage therapists to continue to serve the public safely. The nationwide trend has been to increase to this level or more. R4-15-201(A) is being amended to specify that this change applies to an application received on or after January 1, 2008.

The Board is establishing standards for continuing education in a new Article 3; adding requirements for renewal applications, including time-frames for Board approval or denial of a license and a fee for license renewal and delinquent license renewal; repealing R4-15-101(10)(e) in the definition of good moral character; and adding provisions for rehearing or review in a new Article 4. The Board is also reducing its fee for an application for a regular license. The Board originally established this fee in rules that became effective on June 8, 2004. Because the Board was newly established, the Board projected it would receive 3000 applications for a regular license and charged the application fee that it believed was necessary to sustain operations of the Board. The Board actually received over 7000 applications, causing revenue surpluses for the Board. Thus, the Board has determined it is appropriate to reduce the fee for a regular license.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Board did not review or rely on any study.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

As used in this summary, minimal means less than \$1,000, moderate means between \$1,000 and \$10,000, and substantial means greater than \$10,000.

The proposed rules affect the Board, an applicant for a massage therapy license, a licensee, a Board-approved school, a provider of continuing education, a business that chooses to pay for continuing education, and a consumer seeking massage therapy services.

In the definition of good moral character the Board is repealing the provision that states the applicant has not practiced massage therapy without the required license in this state or in another jurisdiction within the United States within the five years before the date of the application. The Board determined that the rule language may create an absolute barrier to practicing massage therapy and wants to have discretion to determine whether such an applicant is otherwise qualified to practice. The change would allow the Board to license the applicant with an immediate sanction if the Board so chooses. By applying a sanction the Board is protecting the health and safety of consumers. This change benefits an applicant who may be able to practice massage therapy and consumers who will be able to choose from a larger pool of massage therapists.

The fee reduction for a regular application affects the Board. In its original rulemaking, which became effective on June 8, 2004, the Board stated it anticipated licensing 3000 individuals and charged the application fee it believed was necessary to sustain operations. The Board received many more license applications than expected, which resulted in more than 7000 individuals being licensed. The fees submitted by these individuals resulted in revenue surpluses for the Board. The Board has determined it is appropriate to reduce its regular application fee. In the future, the Board anticipates receiving 500 applications for a regular license each year. The fee reduction will cause the Board to lose \$42,500 each year. However, the purpose of the fee reduction is to bring the Board in line with the amount needed each year for Board operations.

The fee reduction for a regular application will minimally benefit an applicant for a regular license, who will be required to submit a \$165 application fee instead of \$250.

The Board is charging a renewal fee of \$75 and a delinquent renewal fee of \$40.

Licenses expire every two years on the licensee's birthday. Thus, a licensee will pay \$37.50 a year to retain a license. The Board currently licenses 7148 massage therapists and expects to renew between 3,000 and 4,000 licensees every year.

The change in R4-15-201, which increases from 500 to 700 the number of classroom hours an applicant must complete to qualify for licensure, affects an applicant who submits a license application after January 1, 2008 and a Board-approved school that provides the classroom instruction. A Board-approved school could increase tuition. The amount of the increase depends on how many classroom hours the Board-approved school currently requires to complete a massage therapy program. Many Board-approved schools have already instituted programs that require 700 or more classroom hours of supervised instruction. The rule should not cause an increase in tuition for an applicant attending one of these schools. An applicant attending a Board-approved school that currently requires less than 700 classroom hours could realize an increase in tuition and the school will benefit from the increase in tuition. The amount will vary depending on the number of classroom hours that need to be increased. An applicant attending a Board-approved school that is currently requiring no more than 500 classroom hours for completion of a massage

Notices of Final Rulemaking

therapy program could be required to pay as much \$2,600 in additional tuition. A Board-approved school's increased revenue depends on the number of applicants attending the Board-approved school.

Unless a licensee's employer pays for continuing education, the licensee will bear the costs of obtaining a minimum of 25 hours of continuing education for the two-year period immediately preceding license expiration. However, it is A.R.S. § 32-4225(E) that imposes this requirement. The rule's purpose is to implement the statute. The continuing education requirement benefits a provider of continuing education. Providers of continuing education charge approximately \$15 to \$30 an hour and each licensee is required to complete 25 hours of continuing education every two years. The amount of the increase in revenue ranges from minimal to substantial, depending on how much continuing education is provided by each provider. Some businesses that hire massage therapists may pay for continuing education and will bear the costs of the continuing education.

The Board bears moderate costs for writing rules to implement its statutes and related economic, small business, and consumer impact statement and mailing the new rules to interested persons.

Businesses that hire licensed massage therapists will benefit from the rules because they will have only qualified massage therapists working for them.

A business that chooses to pay for continuing education for its employees may pass the cost onto consumers of massage therapy services. Consumers benefit from the rules because only massage therapists that meet the requirements contained in the rules and statutes will be allowed to practice in Arizona.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor technical and grammatical changes were made at the suggestion of G.R.R.C. staff.

11. A summary of the comments made regarding the rules and the agency response to them:

The Board did not receive any comments about the rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 15. BOARD OF MASSAGE THERAPY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-15-101. Definitions

R4-15-102. Fees

ARTICLE 2. LICENSING

Section

R4-15-201. Qualifications: Application for a Regular License

R4-15-205. Reserved Application for Renewal of a License

Table 1. Time-frames (in days)

ARTICLE 3. CONTINUING EDUCATION

Section

R4-15-301. Required Continuing Education Hours

R4-15-302. Approval of Continuing Education

R4-15-303. Documentation of Completion of Continuing Education

ARTICLE 4. REGULATORY PROVISIONS

Section

R4-15-401. Rehearing or Review of Board's Decision

ARTICLE 1. GENERAL PROVISIONS

R4-15-101. Definitions

In addition to the definitions in A.R.S. § 32-4201, in this Chapter:

1. "Accredited" means approved by the:
 - a. New England Association of Schools and Colleges,
 - b. Middle States Association of Colleges and Secondary Schools,
 - c. North Central Association of Colleges and Schools,
 - d. Northwest Association of Schools and Colleges,
 - e. Southern Association of Colleges and Schools,
 - f. Western Association of Schools and Colleges, ~~or~~
 - g. National Commission for Certifying Agencies, or
 - ~~g-h.~~ Commission on Massage Therapy Accreditation.
2. "Applicant" means an individual requesting a regular, provisional, temporary, renewal, or reciprocity license from the Board.
3. No change
4. "Board-approved school" means the same as ~~in~~ "Board recognized school" in A.R.S. § 32-4201.
5. "Continuing education" means a workshop, seminar, lecture, conference, class, or instruction related to massage therapy.
6. "Correspondence" or "distance learning format" means the instructor of a continuing education and the individual receiving the instruction are not located in the same room in which the continuing education is being provided.
- ~~5-7.~~ No change
- ~~6-8.~~ No change
- 7-9. "General equivalency diploma" means:
 - a. A document issued by the Arizona Department of Education under A.R.S. § 15-702 to an individual who passes a general educational development test or meets the requirements of A.R.S. § 15-702(B)₂;
 - b. A document issued by a state other than this state to an individual who passes a general educational development test or meets the requirements of a state statute equivalent to A.R.S. § 15-702(B)₂ or
 - c. No change
- ~~8-10.~~ "Good moral character" means an applicant:
 - a. No change
 - b. No change
 - c. Has not, within five years before the date of the application, had a professional license revoked or suspended by this state, a political subdivision of this state, or a regulatory board in another jurisdiction in the United States, or voluntarily surrendered a professional license ~~in lieu in lieu~~ of disciplinary action;
 - d. No change
 - e. ~~Has not practiced massage therapy without the required license in this state or in another jurisdiction within the United States within the five years before the date of the application.~~
- 9-11. No change
- ~~10-12.~~ No change
- ~~11-13.~~ No change
- ~~12-14.~~ No change
- ~~13-15.~~ No change
- ~~14-16.~~ No change
- ~~15-17.~~ No change
- ~~16-18.~~ No change
- 17-19. "Supervised instruction" means the massage therapist responsible for a massage therapy student at a Board-approved school:
 - a. Is present at the location where the massage therapy student is performing massage therapy as part of the massage therapy student's education₂;
 - b. Is immediately available for consultation₂ and
 - c. No change

R4-15-102. Fees

A. The Board shall charge the following fees that are nonrefundable unless A.R.S. § 41-1077 applies:

Notices of Final Rulemaking

1. Application for a license, ~~\$250~~ \$165
 2. No change
 3. No change
 4. License renewal, \$75
 5. Delinquent renewal of a license, \$40
- B.** No change
- C.** No change
- D.** No change

ARTICLE 2. LICENSING

R4-15-201. Qualifications; Application for a Regular License

A. To meet the requirements in A.R.S. § 32-4222(B), an applicant who submits an application:

1. Before January 1, 2008 shall complete 500 classroom hours of supervised instruction at a Board-approved school, and
2. On and after January 1, 2008 shall complete 700 classroom hours of supervised instruction at a Board-approved school.

A. B. No change

1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - i. No change
 - ii. No change
 - e. No change
 - f. No change
 - g. Whether the applicant has successfully completed ~~500~~ the classroom hours of supervised instruction required under subsection (A) at a Board-approved school;
 - h. No change
 - i. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
2. No change
3. No change

B. C. No change

1. No change
2. No change
3. To show proof of completion of ~~500~~ the classroom hours of supervised instruction at a Board-approved school required in subsection (A), academic transcripts from the Board-approved school from which the applicant graduated.

R4-15-205. Reserved Application for Renewal of a License

An applicant for a renewal license shall submit:

1. An application form that contains the applicant's:
 - a. Name,
 - b. Residence and practice addresses, and
 - c. Residence and practice telephone numbers;
2. The information required in R4-15-303; and
3. The fee required in R4-15-102(A).

Notices of Final Rulemaking

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Regular license R4-15-201	A.R.S. § 32-4222	180	90	90
Temporary License R4-15-201	A.R.S. § 32-4224	60	30	30
Provisional License R4-15-202	A.R.S. § 32-4222	180	90	90
License by Reciprocity R4-15-203	A.R.S. § 32-4223	120	60	60
Out-of-state School Approval R4-15-204	A.R.S. § 32-4228	120	60	60
<u>Renewal License</u>	<u>A.R.S. § 32-4225</u>	<u>60</u>	<u>30</u>	<u>30</u>

ARTICLE 3. CONTINUING EDUCATION

R4-15-301. Required Continuing Education Hours

- A.** During the two-year period immediately preceding license expiration, a licensee applying for a renewal license shall complete 25 hours or more of continuing education.
- B.** A licensee may complete a maximum of 12 continuing education hours from a correspondence or distance learning format to satisfy the requirement in subsection (A).

R4-15-302. Approval of Continuing Education

The following continuing education is approved by the Board:

1. Continuing education that is taught by an association, corporation, or organization:
 - a. Accredited by the National Commission for Certifying Agencies, or
 - b. Approved by the NCBTMB.
2. Continuing education sponsored by a massage therapy school or bodywork therapy school that is:
 - a. Affiliated with a community college located in this state, or
 - b. Approved by the Arizona State Board for Private Postsecondary Education;
3. Continuing education offered by a regionally accredited post-secondary institution in a state other than Arizona; or
4. Continuing education offered by an institution approved by a post-secondary educational entity as a massage therapy or bodywork therapy school in a state other than Arizona.

R4-15-303. Documentation of Completion of Continuing Education

When renewing a license, a licensee shall submit with a renewal application documentation of completion of 25 hours of continuing education that includes:

1. The name of the licensee.
2. The title of the continuing education.
3. The subject matter of the continuing education.
4. The date of the continuing education.
5. The hours completed.
6. The location where the continuing education took place.
7. The name of the instructor providing the continuing education, and
8. The signature of the licensee.

Notices of Final Rulemaking

ARTICLE 4. REGULATORY PROVISIONS

R4-15-401. Rehearing or Review of Board's Decision

- A.** Except as provided in subsection (F), a party who is aggrieved by a decision issued by the Board may file with the Board, not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the grounds for rehearing or review. For purposes of this Section and except as provided in A.R.S. § 41-1092.09(C), a decision is considered served when personally delivered to the party's last known address or mailed by certified mail to the party at the party's last known address or the party's attorney.
- B.** A party filing a motion for rehearing or review under this Section may amend the motion at any time before it is ruled upon by the Board. Other parties may file a response within 15 days after the date the motion for rehearing or review is filed. The Board may require that the parties file supplemental memoranda explaining the issues raised in the motion and may permit oral argument.
- C.** The Board may grant a rehearing or review of the decision for any of the following causes materially affecting the party's rights:
- 1.** Irregularity in the proceedings of the Board, administrative law judge, or any abuse of discretion that deprived the party of a fair hearing;
 - 2.** Misconduct of the Board or administrative law judge;
 - 3.** Accident or surprise that could not have been prevented by ordinary prudence;
 - 4.** Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 - 5.** Excessive or insufficient penalties;
 - 6.** Error in the admission or rejection of evidence or other errors of law occurring at the hearing; or
 - 7.** That the findings of fact or decision are not supported by the evidence or are contrary to law.
- D.** The Board may affirm or modify its decision or grant a rehearing or review to all or any of the parties on all or part of the issues for the reasons specified in subsection (C). An order modifying a decision or granting a rehearing or review shall specify the grounds for the rehearing or review and the rehearing or review shall cover only those matters specified.
- E.** No later than 30 days after a decision is issued by the Board, the Board may, on its own initiative, grant a rehearing or review of its decision for any reasons in subsection (C). An order granting a rehearing or review shall specify the grounds for the rehearing or review.
- F.** If the Board makes specific findings that the immediate effectiveness of the decision is necessary for the preservation of the public health and safety and determines that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If the Board issues the decision as a final decision without an opportunity for a rehearing or review, the aggrieved party may make an application for judicial review within the time limits permitted for an application for judicial review of the Board's final decision under A.R.S. § 12-904.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

[R06-270]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R4-22-101 | New Section |
| R4-22-109 | Re-number |
| R4-22-207 | Re-number |
| R4-22-207 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. § 32-1803(C)(1)
- Implementing statute: A.R.S. § 32-1825
- 3. The effective date of the rules:**
- September 9, 2006

Notices of Final Rulemaking

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 12 A.A.R. 1179, April 14, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 1136, April 14, 2006

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Jack Confer, Executive Director

Address: Board of Osteopathic Examiners in Medicine and Surgery
9535 E. Doubletree Ranch Rd.
Scottsdale, AZ 85258-5539

Telephone: (480) 657-7703

Fax: (480) 657-7715

E-mail: Jack.confer@azdo.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

In this rulemaking, the Board rennumbers and amends the rule that establishes approved continuing medical education requirements and the procedure for requesting a waiver of or extension of time in which to complete the requirements. It also defines words regarding continuing medical education.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

The economic impact of the rulemaking will be minimal. Statute requires that a licensee obtain 20 hours of Board-approved continuing medical education (CME) every year. In this rulemaking, the Board indicates that in addition to the CME previously approved, it approves certain CME provided by the Accreditation Council for Continuing Medical Education. This may provide an economic benefit to CME providers that are able to obtain approval from the ACCME and will make it more convenient for a licensee to obtain required CME.

Statute provides that a licensee may, under certain circumstances, obtain a waiver of the continuing medical education requirement. It also provides that the Board may grant an extension of time in which to complete the required continuing medical education. This rulemaking provides instructions for applying for a waiver or an extension. Compliance with either procedure will have a minimal economic cost and will benefit the licensee who is able to obtain a waiver or extension.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Only minor, non-substantive changes were made between the proposed and final rules.

11. A summary of the comments made regarding the rule and the agency response to them:

An oral proceeding was held on May 15, 2006. No one attended. No written comments were received.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No.

Notices of Final Rulemaking

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 22. BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-22-101. ~~Expired~~ Definitions

R4-22-109. ~~Continuing Medical Education; Approval; Waiver~~ Renumbered

ARTICLE 2. LICENSING AND TIME-FRAMES

Section

~~R4-22-109; R4-22-207. Reserved~~ Continuing Medical Education; Approval; Waiver; Extension of Time to Complete

ARTICLE 1. GENERAL PROVISIONS

R4-22-101. ~~Expired~~ Definitions

In addition to the definitions in A.R.S. § 32-1800, in this Chapter:

“ACCME” means the Accreditation Council for Continuing Medical Education.

“AOA” means the American Osteopathic Association.

“CME” means continuing medical education.

“Continuing medical education” means a course, program, or other training that the Board approves for license renewal.

“Licensee” means an individual who holds a current license issued under A.R.S. Title 32, Chapter 17.

R4-22-109. ~~Continuing Medical Education; Approval; Waiver~~ Renumbered

ARTICLE 2. LICENSING AND TIME-FRAMES

~~**R4-22-109; R4-22-207. Reserved**~~ **Continuing Medical Education; Approval; Waiver; Extension of Time to Complete**

~~A. Board approved continuing medical education programs required by Under A.R.S. § 32-1825(B) include: a licensee is required to obtain 20 hours of Board-approved CME in each of the two years preceding license renewal. The Board shall approve the CME of a licensee if the CME complies with the following:~~

~~1. Programs At least 12 hours are obtained annually by completing a CME classified by the American Osteopathic Association (AOA) AOA as Approved-Category 1A Continuing Medical Education defined in the AOA Continuing Medical Education Guide dated 1983, incorporated herein by reference and on file in the Office of the Secretary of State; and~~

~~2. No more than eight hours are obtained annually by completing a CME classified by the ACCME as Category 1.~~

~~2-B. Residency During the first year that a licensee is licensed, the licensee may fulfill 20 hours of the CME requirement by participating in an approved residency, internship, fellowship, or preceptorship in a teaching institution approved by the AOA or the American Medical Association (AMA).~~

~~**B-C.** The Board shall accept the following is acceptable evidence documentation as evidence of compliance with the CME requirement of continuing medical education for annual license renewal:~~

~~1. An individual using AOA Approved-Category 1A Continuing Medical Education shall submit either For a CME under subsection (A)(1): the~~

~~a. The AOA printout of the individual's continuing medical education or a certificate of attendance from the sponsor of the course; licensee's CME; or~~

~~b. A copy of the certificate of attendance from the provider of the CME showing:~~

~~i. Licensee's name,~~

~~ii. Title of the CME,~~

~~iii. Name of the provider of the CME,~~

~~iv. Category of the CME,~~

~~v. Number of hours in the CME, and~~

~~vi. Date of attendance;~~

Notices of Final Rulemaking

2. For a CME under subsection (A)(2), a copy of the certificate of attendance from the provider of the CME showing the information listed in subsection (C)(1)(b); and
- 2-3. Interns, residents, fellows or preceptors shall submit For a CME under subsection (B), either a letter from the Director of Medical Education or a certificate of completion for the approved internship, residency, fellowship, or preceptorship, or a copy of a certificate of completion of the internship, residency, fellowship, or preceptorship.
- ~~C.D.~~ Requests for waiver Waiver of continuing medical education CME requirements. To obtain a waiver under A.R.S. § 32-1825(C) of the CME requirements, a licensee shall submit to the Board a written request that includes made pursuant to A.R.S. § 32-1825(C) must be in writing and must be accompanied by the following documentation depending upon the reason for waiver:
 1. The period for which the waiver is requested.
 2. CME completed during the current license period and the documentation required under subsection (C), and
 3. Reason that a waiver is needed and the applicable documentation:
 1. Disability ~~letter from treating physician stating nature of disability.~~
 - 2-a. Military ~~For military service. A copy of current orders or a letter on official letterhead from the licensee's commanding officer verifying type of service (administrative or practice of medicine);~~
 - 3-b. Absence ~~For absence from the United States, photocopy A copy of pages from the licensee's passport showing dates of exit and, if applicable, date of reentry dates;~~
 - c. For disability. A letter from the licensee's treating physician stating the nature of the disability; or
 - 4-d. Circumstances ~~For circumstances beyond the licensee's control, - A letter from the licensee stating the nature of the circumstances explaining why it is beyond the licensee's control to timely obtain the required continuing education. The letter must be supplemented with supporting documentation and any supporting documentation.~~
- E. The Board shall grant a request for waiver of CME requirements that:
 1. Is based on a reason listed in subsection (D)(3).
 2. Is supported by the required documentation.
 3. Is filed no sooner than 60 days before and no later than 30 days after the license renewal date, and
 4. Will promote the safe and professional practice of osteopathy in this state.
- F. Extension of time to complete CME requirements. To obtain an extension of time under A.R.S. § 32-1825(C) to complete the CME requirements, a licensee shall submit to the Board a written request that includes the following:
 1. Ending date of the requested extension.
 2. CME completed during the current license period and the documentation required under subsection (C).
 3. Proof of registration for additional CME that is sufficient to enable the licensee to complete all CME required for license renewal before the end of the requested extension, and
 4. Licensee's attestation that the CME obtained under the extension will be reported only to fulfill the current license renewal requirement and will not be reported on a subsequent license renewal application.
- G. The Board shall grant a request for an extension that:
 1. Specifies an ending date no later than May 1.
 2. Includes the required documentation and attestation.
 3. Is submitted no sooner than 60 days before and no later than 30 days after the license renewal date, and
 4. Will promote the safe and professional practice of osteopathy in this state.

NOTICE OF FINAL RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION

[R06-271]

PREAMBLE

- | | |
|--|---|
| 1. <u>Sections Affected</u>
R9-8-102
R9-8-107 | <u>Rulemaking Action</u>
Amend
Amend |
|--|---|
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 36-136(A)(7) and 36-136(F)
Implementing statute: A.R.S. § 36-136(H)(4)

Notices of Final Rulemaking

3. The effective date of the rules:

September 9, 2006

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 12 A.A.R. 227, January 27, 2006

Notice of Proposed Rulemaking: 12 A.A.R. 802, March 17, 2006

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Don Herrington, Office Chief

Address: Arizona Department of Health Services
Office of Environmental Health
Bureau of Epidemiology and Disease Control
150 N. 18th Ave., Suite 430
Phoenix, AZ 85007

Telephone: (602) 364-3118

Fax: (602) 364-3146

E-mail: herrind@azdhs.gov

Or:

Name: Kathleen Phillips, Rules Administrator

Address: Arizona Department of Health Services
Office of Administrative Rules
1740 W. Adams St., Suite 202
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

6. An explanation of the rule, including the agency's reason for initiating the rule:

The purpose of this rulemaking is to implement Laws 2004, Ch. 51, effective August 25, 2004, which requires the Arizona Department of Health Services (Department) to prescribe reasonably necessary measures to assure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects, or disease-causing organisms. The rules for the regulation and inspection of food and drink in Arizona are in A.A.C. Title 9, Chapter 8, Article 1. The Department had exempted milk and milk products from A.A.C. Title 9, Chapter 8, Article 1. The Department is amending R9-8-102 to remove the exemption for milk and milk products from the Article. In R9-8-107, the Department has incorporated the United States Food and Drug Administration publication, *Food Code: 1999, Recommendations of the United States Public Health Service, Food and Drug Administration* (1999) (FC), as modified. The Department is amending R9-8-107 to include the sections of the FC that apply to milk and milk products sold at the retail level.

Although the Department does not currently require the inspection of milk and milk products sold at the retail level, county health departments and the Department have been conducting food establishment inspections where milk and milk products were sold. During fiscal year 2005, county health departments and the Department conducted 71,492 food safety inspections at 30,313 food establishments currently licensed to operate in Arizona.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review or rely on any study during this rulemaking.

8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact:

Annual cost/revenues are designated as minimal when less than \$1,000.00, moderate when between \$1,000.00 and \$10,000.00, and substantial when greater than \$10,000.00.

This rulemaking affects any person selling milk or milk products at the retail level in Arizona, county health departments inspecting food establishments, and the Department.

Notices of Final Rulemaking

The estimated cost to any person selling milk or milk products at the retail level in Arizona is minimal because the rulemaking does not change the responsibilities of the person selling milk and milk products at the retail level in Arizona.

The county health departments are currently inspecting food establishments in Arizona and the cost to include inspections of milk and milk products during a food inspection is minimal.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Minor technical and grammatical changes were made at the recommendation of Governor's Regulatory Review Council staff.

11. A summary of the comments made regarding the rule and the agency response to them:

The Department did not receive any comments regarding the rules.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

13. Incorporations by reference and their location in the rules:

In R9-8-107, the Department has incorporated the United States Food and Drug Administration publication, *Food Code: 1999, Recommendations of the United States Public Health Service, Food and Drug Administration* (1999) (FC), as modified. The Department is amending R9-8-107 to include the sections of the FC that apply to milk and milk products sold at the retail level.

14. Was this rule previously made as an emergency rule?

No.

15. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 8. DEPARTMENT OF HEALTH SERVICES
FOOD, RECREATIONAL, AND INSTITUTIONAL SANITATION**

ARTICLE 1. FOOD AND DRINK

Section

R9-8-102. Applicability

R9-8-107. Food Safety Requirements

ARTICLE 1. FOOD AND DRINK

R9-8-102. Applicability

This Article does not apply to the following:

1. No change
2. ~~Milk and milk products;~~
3. 2. No change
4. 3. No change
5. 4. No change
6. 5. No change
7. 6. No change
8. 7. No change
9. 8. No change

R9-8-107. Food Safety Requirements

- A. A LICENSE HOLDER shall comply with the United States Food and Drug Administration publication, Food Code: 1999 Recommendations of the United States Public Health Service, Food and Drug Administration (1999), as modified, which is incorporated by reference. This incorporation by reference contains no future editions or amendments. The incorporated material is on file with the Department and ~~the Office of the Secretary of State~~; is available for purchase from the United States Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, as report number PB99-115925, or from the United States Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D.C. 20402-9328, as ISBN 0-16-050028-1; and is available

Notices of Final Rulemaking

on the Internet at <http://www.fda.gov>.

B. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change
12. No change
13. Paragraph 3-202.14(B) is ~~deleted~~ modified to read: “All milk and milk products sold at the retail level in Arizona shall comply with the requirements in A.A.C. Title 3, Chapter 2, Article 8.”;
14. ~~Paragraph 3-202.14(C) is deleted;~~
15. ~~Paragraph 3-202.14(D) is deleted;~~
16. ~~14.~~ No change
17. ~~15.~~ No change
18. ~~16.~~ No change
19. ~~17.~~ No change
20. ~~18.~~ No change
21. ~~19.~~ No change
22. ~~20.~~ No change
23. ~~21.~~ No change
24. ~~22.~~ No change
25. ~~23.~~ No change
26. ~~24.~~ No change
27. ~~25.~~ No change
28. ~~26.~~ No change
29. ~~Section 3-603.11 is modified by deleting “milk”;~~
30. ~~27.~~ No change
31. ~~28.~~ No change
32. ~~29.~~ No change
33. ~~30.~~ No change
34. ~~31.~~ No change
35. ~~32.~~ No change
36. ~~33.~~ No change
37. ~~34.~~ No change
38. ~~35.~~ No change
39. ~~36.~~ No change
40. ~~37.~~ No change
41. ~~38.~~ No change
42. ~~39.~~ No change
43. ~~40.~~ No change
44. ~~41.~~ No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. ~~Section 3-201.13,~~
 - h. ~~g.~~ No change
 - i. ~~h.~~ No change
 - j. ~~i.~~ No change
 - k. ~~j.~~ No change
 - l. ~~k.~~ No change

Notices of Final Rulemaking

- ~~44.~~ 1. No change
- ~~45.~~ 2. No change
- ~~46.~~ 3. No change
- ~~47.~~ 4. No change
- ~~48.~~ 5. No change
- ~~49.~~ 6. No change
- ~~50.~~ 7. No change
- ~~51.~~ 8. No change
- ~~52.~~ 9. No change
- ~~53.~~ 10. No change
- ~~54.~~ 11. No change
- ~~55.~~ 12. No change
- ~~56.~~ 13. No change
- ~~57.~~ 14. No change
- ~~58.~~ 15. No change
- ~~59.~~ 16. No change
- ~~60.~~ 17. No change
- ~~61.~~ 18. No change
- ~~62.~~ 19. No change
- ~~63.~~ 20. No change
- ~~64.~~ 21. No change
- ~~65.~~ 22. No change
- ~~66.~~ 23. No change
- ~~67.~~ 24. No change
- ~~68.~~ 25. No change
- ~~69.~~ 26. No change
- ~~70.~~ 27. No change
- ~~71.~~ 28. No change
- ~~72.~~ 29. No change
- ~~73.~~ 30. No change
- ~~74.~~ 31. No change
- ~~75.~~ 32. No change
- ~~76.~~ 33. No change
- ~~77.~~ 34. No change
- ~~78.~~ 35. No change
- ~~79.~~ 36. No change
- ~~80.~~ 37. No change
- ~~81.~~ 38. No change
- ~~82.~~ 39. No change
- ~~83.~~ 40. No change
- ~~84.~~ 41. No change
- ~~85.~~ 42. No change